

### **REMARKS**

According to the Office Action of November 27, 2007, the specification and abstract has been objected to, claims 117-129 have been rejected, and claims 130-132 have been withdrawn as directed to non-elected subject matter. Applicants have amended claims 117 and 124, and have cancelled claims 121-123. In view of these amendments and cancellations of claims, and the below remarks, Applicants respectfully request reconsideration and withdrawal of the asserted rejections.

#### **Objection to the Specification**

On page 3, the Office Action objects to page 33 of the specification for reciting a nucleic acid sequences greater than 10 nucleotides in length instead of using "SEQ ID NO" identifiers. In view of the amendment to the specification where the nucleic acid sequences were deleted and replaced with corresponding SEQ ID NOs, Applicants respectfully request that this objection be withdrawn.

#### **Objection to the Abstract**

The abstract was objected to for use of the term "said." The term "said" has been deleted and/or replaced with "the" in the abstract. Therefore, Applicants respectfully request that this objection be withdrawn.

#### **Rejection under 35 U.S.C. § 112, Second Paragraph**

Claims 117-129 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. In view of the amendments to the claims, Applicants respectfully request that these rejections be withdrawn.

#### **Rejection under 35 U.S.C. § 103**

Claims 117-129 have been rejected under 35 U.S.C. § 103 as unpatentable over Chakravorty *et al.* (FEMS Microbiology Letters (2001) 205: 113-117) ("Chakravorty") in view of Jaber *et al.* (Tubercle and Lung Disease (1995) 76: 578-581) ("Jaber"), United States Published Patent Application No. 2001/0024801 to Nair *et al.* ("Nair"), GenBank Accession No. U22037 ("U22037"), Marchetti *et al.* (J. of Clinical Microbiology (1998) 36(6): 1512-1517) ("Marchetti"), and/or Buck *et al.* (BioTechniques (1999) 27(3): 528-536) ("Buck").

## **I. REJECTION OF CLAIMS 117-126**

Specifically, claims 117-126 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Chakravorty in view of Jaber and Nair. The invention as recited in claims 117-126 is patentable over these references because. Jaber does not state that GuHCl can be used in place of GITC. For this reason, a *prima facie* case of obviousness has not been established.

## **II. REJECTION OF CLAIMS 127-129**

Claims 127-129 have been rejected under 35 U.S.C. § 103 as unpatentable over Chakravorty in view of Jaber, Nair, U22037, Marchetti and Buck. Claims 127-129, which ultimately depend from claim 117, are patentable over these references for the same reason claim 117 is patentable over the combination of Chakravorty, Jaber and Nair

Additionally, there is no motivation to combine these references. According to *Yamanouchi Pharmaceutical*, there must be some motivation for a hypothetical person of ordinary skill in the field at the time of the patent to take the myriad components of various teachings of prior art and combine them to create the claimed invention. *Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc.*, 21 F.Supp.2d 366, 373, 48 U.S.P.Q.2d 1741 (S.D.N.Y. 1998), *aff'd*, 231 F.3d 1339 (Fed. Cir. 2000), *reh'g and reh'g en banc denied* by, 2000 U.S. App. LEXIS 34047 (Fed. Cir. 2000). In *Yamanouchi Pharmaceutical*, the court found that a skilled artisan would not be motivated to dispel all potential compounds disclosed in the cited reference, particularly when many of the disclosed compounds did not ever enter clinical trials due to insufficient potency, side effects or toxicity. *Id.*

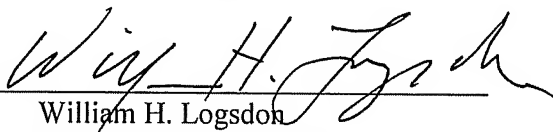
Likewise, there is no motivation to pick over the vast number of possible primers to arrive at the particularly claimed primers. Without such a motivation, the references cannot be combined.

### Conclusion

In view of the amendments to the claims and remarks, Applicants respectfully request that the objections and rejections asserted in the Office Action of November 27, 2007 be reconsidered and withdrawn, that pending claims 117-120, and 124-129 be allowed, and that claims 130-132 be rejoined and allowed.

Respectfully submitted,

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